

bank receives approval to establish a branch pursuant to 12 CFR 5.30.

[61 FR 4862, Feb. 9, 1996, as amended at 64 FR 60098, Nov. 4, 1999]

§ 7.1014 Sale of money orders at nonbanking outlets.

A national bank may designate bonded agents to sell the bank's money orders at nonbanking outlets. The responsibility of both the bank and its agent should be defined in a written agreement setting forth the duties of both parties and providing for remuneration of the agent. The bank's agents need not report on sales and transmit funds from the nonbanking outlets more frequently than at the end of the third business day following receipt of the funds.

§ 7.1015 Receipt of stock from a small business investment company.

A national bank may purchase the stock of a small business investment company (SBIC) (*see* 15 U.S.C. 682(b)), and may receive the benefits of such stock ownership (*e.g.*, stock dividends). The receipt and retention of a dividend by a national bank from an SBIC in the form of stock of a corporate borrower of the SBIC is not a purchase of stock within the meaning of 12 U.S.C. 24 (Seventh).

§ 7.1016 Independent undertakings to pay against documents.

(a) *General authority.* A national bank may issue and commit to issue letters of credit and other independent undertakings within the scope of the applicable laws or rules of practice recognized by law.¹ Under such letters of credit

and other independent undertakings, the bank's obligation to honor depends upon the presentation of specified documents and not upon nondocumentary conditions or resolution of questions of fact or law at issue between the applicant and the beneficiary. A national bank may also confirm or otherwise undertake to honor or purchase specified documents upon their presentation under another person's independent undertaking within the scope of such laws or rules.

(b) *Safety and soundness considerations*—(1) *Terms.* As a matter of safe and sound banking practice, banks that issue independent undertakings should not be exposed to undue risk. At a minimum, banks should consider the following:

(i) The independent character of the undertaking should be apparent from its terms (such as terms that subject it to laws or rules providing for its independent character);

(ii) The undertaking should be limited in amount;

(iii) The undertaking should:

(A) Be limited in duration; or

(B) Permit the bank to terminate the undertaking either on a periodic basis (consistent with the bank's ability to make any necessary credit assessments) or at will upon either notice or payment to the beneficiary; or

(C) Entitle the bank to cash collateral from the applicant on demand (with a right to accelerate the applicant's obligations, as appropriate); and

(iv) The bank either should be fully collateralized or have a post-honor right of reimbursement from the applicant or from another issuer of an independent undertaking. Alternatively, if

¹Examples of such laws or rules of practice include: The applicable version of Article 5 of the Uniform Commercial Code (UCC) (1962, as amended 1990) or revised Article 5 of the UCC (as amended 1995) (available from West Publishing Co., 1/800/328-4880); the Uniform Customs and Practice for Documentary Credits (International Chamber of Commerce (ICC) Publication No. 600 or any applicable prior version) (available from ICC Publishing, Inc., 212/206-1150; <http://www.iccwbo.org>); the Supplements to UCP 500 & 600 for Electronic Presentation (eUCP v. 1.0 & 1.1) (Supplements to the Uniform Customs and Practices for Documentary Credits for Electronic Presentation) (available from ICC Publishing, Inc., 212/206-1150; <http://www.iccwbo.org>).

www.iccwbo.org) International Standby Practices (ISP98) (ICC Publication No. 590) (available from the Institute of International Banking Law & Practice, 301/869-9840; <http://www.iiblp.org>); the United Nations Convention on Independent Guarantees and Standby Letters of Credit (adopted by the U.N. General Assembly in 1995 and signed by the U.S. in 1997) (available from the U.N. Commission on International Trade Law, 212/963-5353); and the Uniform Rules for Bank-to-Bank Reimbursements Under Documentary Credits (ICC Publication No. 525) (available from ICC Publishing, Inc., 212/206-1150; <http://www.iccwbo.org>); as any of the foregoing may be amended from time to time.

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the bank's undertaking is to purchase documents of title, securities, or other valuable documents, the bank should obtain a first priority right to realize on the documents if the bank is not otherwise to be reimbursed.

(2) *Additional considerations in special circumstances.* Certain undertakings require particular protections against credit, operational, and market risk:

(i) In the event that the undertaking is to honor by delivery of an item of value other than money, the bank should ensure that market fluctuations that affect the value of the item will not cause the bank to assume undue market risk;

(ii) In the event that the undertaking provides for automatic renewal, the terms for renewal should be consistent with the bank's ability to make any necessary credit assessments prior to renewal;

(iii) In the event that a bank issues an undertaking for its own account, the underlying transaction for which it is issued must be within the bank's authority and comply with any safety and soundness requirements applicable to that transaction.

(3) *Operational expertise.* The bank should possess operational expertise that is commensurate with the sophistication of its independent undertaking activities.

(4) *Documentation.* The bank must accurately reflect the bank's undertakings in its records, including any acceptance or deferred payment or other absolute obligation arising out of its contingent undertaking.

(c) *Coverage.* An independent undertaking within the meaning of this section is not subject to the provisions of §7.1017.

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§7.1017 National bank as guarantor or surety on indemnity bond.

(a) A national bank may lend its credit, bind itself as a surety to indemnify another, or otherwise become a guarantor (including, pursuant to 12 CFR 28.4, guaranteeing the deposits and other liabilities of its Edge corporations and Agreement corporations

and of its corporate instrumentalities in foreign countries), if:

(1) The bank has a substantial interest in the performance of the transaction involved (for example, a bank, as fiduciary, has a sufficient interest in the faithful performance by a cofiduciary of its duties to act as surety on the bond of such cofiduciary); or

(2) The transaction is for the benefit of a customer and the bank obtains from the customer a segregated deposit that is sufficient in amount to cover the bank's total potential liability. A segregated deposit under this section includes collateral:

(i) In which the bank has perfected its security interest (for example, if the collateral is a printed security, the bank must have obtained physical control of the security, and, if the collateral is a book entry security, the bank must have properly recorded its security interest); and

(ii) That has a market value, at the close of each business day, equal to the bank's total potential liability and is composed of:

(A) Cash;

(B) Obligations of the United States or its agencies;

(C) Obligations fully guaranteed by the United States or its agencies as to principal and interest; or

(D) Notes, drafts, or bills of exchange or bankers' acceptances that are eligible for rediscount or purchase by a Federal Reserve Bank; or

(iii) That has a market value, at the close of each business day, equal to 110 percent of the bank's total potential liability and is composed of obligations of a State or political subdivision of a State.

(b) In addition to paragraph (a) of this section, a national bank may guarantee obligations of a customer, subsidiary or affiliate that are financial in character, provided the amount of the bank's financial obligation is reasonably ascertainable and otherwise consistent with applicable law.

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